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IN THE

Supreme Court of the United States

October Term, A. D. 1933

NO. 106

W. D. SANDERS, Petitioner,

vs.

ARMOUR FERTILIZER WORKS and NATIONAL FIRE INSURANCE COMPANY, Respondents.

Respondent's Reply to Suggestions of Petitioner Concerning the Question of the Jurisdiction of the District Court Below

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We are of the opinion that the suggestions concerning the question of the jurisdiction of the District Court below, made on behalf of W. D. Sanders, do not call for a lengthy reply. These suggestions on behalf of the Petitioner are based upon a very narrow construction of the words "adverse claimants," contained in the Federal Interpleader Act, 28 U. S. C. A. 41 (2[illegible]), as amended May 8, 1926. The construction given to the words "adverse claimants" by the Petitioner, if followed, would defeat the main purpose for which the Federal Interpleader Act was enacted. It is submitted

that most of the claims against insurance companies by citizens of different States arise in instances like that under consideration by the Court, where a garnishor is one of the parties involved. It is difficult to conceive situations where the above Act would be applicable if no creditor is involved. In life insurance there might be situations where relatives are claiming adversely the proceeds of a policy, but in the vast majority of such cases the relatives will be living in the same State.

The interpretation placed upon the words "adverse claimants" by the petitioner seems to construe those words contained in the Federal Interpleader Act as meaning that there must be two or more claimants to the sole ownership of the proceeds involved. The Petitioner seems to proceed on the theory that if one party is merely asserting an equitable lien to the proceeds due on an insurance policy, that, since he is not claiming absolute ownership of the fund, that his claim is not adverse to the party who does claim absolute ownership.

A similar contention was made in a case styled *In Re Rathman*, 183 Fed. 913, where the words "adverse claimants," as used in the Bankruptcy Law, was the subject of construction. The Court held that a mere lien-holder may be an adverse claimant within the meaning of the Bankruptcy law. In the course of its Opinion, the court said:

> "A claim of paramount or absolute title is not essential to the character of an adverse claimant. One who has a substantial claim to a lien created by a Bankrupt upon his property before the peti-

tion in bankruptcy is filed, is equally an adverse claimant with one who claims absolute title thereto."

The contention herein made by the Petitioner that the claims of Armour and Sanders are not adverse, was, it is submitted, correctly and tersely disposed of by the United States Circuit Court of Appeals for the Fifth Circuit, in these words:

> "We think that the facts in this case show that the District Court is mistaken in concluding that the claims of Armour and Sanders are not adverse. Each is claiming the proceeds of the policies, to the exclusion of the other. Armour claims by virtue of its Illinois judgment against Sanders and the attachment, and Sanders, while not disputing his obligation to Armour, claims the proceeds notwithstanding, by virtue of exemption under the laws of Texas. The statute is remedial, and to be liberally construed. It is broad enough to cover any adverse claims against the proceeds of the policies, no matter on what grounds urged. Its terms are not to be interpreted as meaning only adverse claims of those pretending to be beneficiaries of the insurance."

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 106.—October Term, 1933.

W. D. Sanders, Petitioner, *vs.* Armour Fertilizer Works and National Fire Insurance Company. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 30, 1934.]

Mr. Justice McReynolds delivered the opinion of the Court.

New York Life Insurance Company v. *Dunlevy* (1916), 241 U. S. 518, exhibited the serious problems encountered by insurance companies when conflicting demands are made by residents of different States. There two individuals, residents of California and Pennsylvania, claimed the surrender value of a life policy. The insurer unsuccessfully sought through interpleader proceedings in Pennsylvania to secure release from all liability.

In order to mitigate the difficulties, Congress, by the Act of February 27, 1917, 39 Stat. 929, authorized insurance companies to file bills of interpleader in District Courts of the United States. An amendment followed February 25, 1925, 43 Stat. 976, U. S. C. A. 28, Sec. 41 (26). And the Act of May 8, 1926, 44 Stat. 416, U. S. C. A. 28 Supp., Sec. 41 (26) (in the margin[1]), rewrote and amplified the provisions of the earlier enactments.

[1]Act approved May 8, 1926, 44 Stat. 416. "Chap. 273—The district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader duly verified, filed by any casualty company, surety company, insurance company or association or fraternal or beneficial society, and averring that one or more persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association, or society has in its custody or possession money or property of the value of $500 or more, or has issued a bond or policy of insurance or certificate of membership providing for the payment of $500 or more to the obligee or obligees in such bonds or as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property or the penalty of such bond, or to such insurance, indemnity, or benefits; that such company, association, or society has deposited such money or property

National Fire Insurance Company and Hartford Fire Insurance Company, Connecticut corporations, under policies issued to him, became indebted to W. D. Sanders, resident of the Eastern District of Texas, for loss by fire (July 3, 1927) of property located therein and part of his homestead. Texas statutes exempt from execution the proceeds of such insurance. The indebtedness of the two insurers respectively was adjusted at $3400.00 and $4250.00; these sums they agreed to pay. Both Companies were garnished in a foreign attachment proceeding against Sanders instituted July 18, 1927, in an Illinois court by Armour Fertilizer Works, a corporation of that State. This proceeding was based

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or has paid the amount of such bond or policy into the registry of the court, there to abide the judgment of the court.

"Sec. 2. In all such cases if the policy or certificate is drawn payable to the estate of the insured and has not been assigned in accordance with the terms of the policy or certificate the district court of the district of the residence of the personal representative of the insured shall have jurisdiction of such suit. In case the policy or certificate has been assigned during the life of the insured in accordance with the terms of the policy or certificate, the district court of the district of the residence of the assignee or of his personal representative shall have jurisdiction. In case the policy or certificato is drawn payable to a beneficiary or beneficiaries and there has been no such assignment as aforesaid the jurisdiction shall be in the district court of the district in which the beneficiary or beneficiaries or their personal representatives reside. In case there are claimants of such money or property, or in case there are beneficiaries under any such bond or policy resident in more districts than one, then jurisdiction shall be in the district court in any district in which a beneficiary or the personal representative of a claimant or a deceased claimant or beneficiary resides. Notwithstanding any provision of Part I of this title to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court on account of such money or property or on such bond or on such policy or certificate of membership until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"Sec. 3. Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.

"Sec. 4. . . ."

upon his notes which undertook to waive homestead and exemption rights. The garnishees admitted liability to Sanders but gave notice of his claim that the proceeds of the policies were exempt from garnishment under Texas laws. He did not appear. After proper publication, judgment was entered against him September 19, 1927. This sustained the attachment and awarded recovery against him in favor of the Fertilizer Works for the amount due upon the notes—$7,589.81; also directed execution. It is in the margin.[2]

Before final trial in the Illinois court under their answers, as permitted by the Act of May 8, 1926, the Insurance Companies, claiming to be mere stakeholders, filed separate interpleader proceedings in the District Court, Eastern District of Texas—June 12, 1928. Sanders and Armour Fertilizer Works, alleged adverse claimants, were made defendants. The sums admitted to be due under the fire policies were paid into court. An injunction re-

[2] "On motion of the plaintiff herein, the defendant, W. D. Sanders, is ruled to appear herein instanter, and thereupon said defendant being called in open court comes not, nor does anyone for said defendant, but herein said defendant makes default, and it appearing to the court that said defendant was duly notified by publication of notice according to law duly notifying said defendant of the pendency of this suit and of the time required of said defendant to appear herein, all of which was a sufficient number of days prior to the time required of said defendant to appear as aforesaid to now require of said defendant that said defendant either appear in this cause at this time or that said defendant suffer judgment by default for want of such appearance, and it further appearing to the court that said defendant is still in default of an appearance herein, it is, on motion of the plaintiff, ordered by the court that default be entered herein against said defendant for want of an appearance.

"And as to the damages sustained by the plaintiff herein, the court hears the evidence contained in the affidavit of plaintiff's claim filed herein and finds therefrom that there is due to the plaintiff the sum of money shown in said affidavit of claim to be due, and assessed the plaintiff's damages at the sum of seven thousand, five hundred eighty-nine and 81/100 dollars ($7,589.81).

"This cause coming on for further proceedings herein, it is considered by the court that the attachment herein be and it hereby is sustained, that the plaintiff have judgment on the default and assessment of damages herein, and that the plaintiff have and recover of and from the defendant, W. D. Sanders, the damages of the plaintiff amounting to the sum of seven thousand, five hundred eighty-nine and 81/100 ($7,589.81) in form as aforesaid assessed, together with the costs by the plaintiff herein expended and that execution issue therefor."